

# NOMINATION OF PAUL HOMAN

Y 4. IN 2/11: S. HRG. 104-340

Nomination of Paul Homan, S.Hrg.104...

## HEARING BEFORE THE COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE ONE HUNDRED FOURTH CONGRESS FIRST SESSION NOMINATION OF PAUL HOMAN

SEPTEMBER 13, 1995  
WASHINGTON, DC



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## NOMINATION OF PAUL HOMAN

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WEDNESDAY, SEPTEMBER 13, 1995

U.S. SENATE,  
COMMITTEE ON INDIAN AFFAIRS,  
*Washington, DC.*

The committee met, pursuant to notice, at 9:02 a.m. in room 485, Senate Russell Building, Hon. John McCain (chairman of the committee) presiding.

Present: Senator McCain.

### STATEMENT OF HON. JOHN McCAIN, U.S. SENATOR FROM ARIZONA, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator MCCAIN. The committee will come to order.

I want to welcome everyone to this hearing on the President's nomination of Paul Homan to be Special Trustee for American Indians.

Last fall when the Congress enacted the Indian Trust Funds Reform Act, we saw a very compelling need for the President to appoint a special trustee who would bring superior and demonstrated experience to the task of reforming the way the Department carries out its trust obligations to Indians, particularly in the area of financial trust management.

From the record already before this committee, Mr. Homan appears to have met the high standard of personal quality and competence set forth in the act. He has had ample experience in the area of financial management. He has shouldered substantial responsibilities at the highest levels of both the public and private sectors. And of equal importance, Mr. Homan has earned the trust and support of many of the tribes who helped develop the Reform Act last year.

It is no secret that the Bureau of Indian Affairs [BIA] has had a terrible track record on Indian trust management. In some cases there appears to be no record of the BIA's actual failures because basic records that any ordinary trustee should have made or kept, cannot be found. In my view, the BIA's many failures amount to—when viewed in the best light—criminal negligence. Every failure of the Federal trustee is a theft from Indian people; these people are supposed to be the beneficiaries of the trust.

The BIA's failings in the area of Indian trust management have been well documented. Congress has responded by passing the Trust Funds Reform Act. It is high time that the administration vigorously implement that act with effective action.

Unless I am surprised by something we learn here today, I expect to support prompt approval of this nomination by this committee and the full Senate.

With that, let me ask our first witness, Elouise Cobell, who chairs the Intertribal Monitoring Association on Indian Trust Funds, to introduce the nominee and offer her statement.

Welcome. Thank you. Please proceed.

**STATEMENT OF ELOUISE C. COBELL, CHAIR, INTERTRIBAL MONITORING ASSOCIATION ON INDIAN TRUST FUNDS**

Ms. COBELL. Mr. Chairman and members of the committee, thank you for the opportunity to testify on this significant occasion.

As I reflect on the progress that has occurred on the reform of our Indian trust funds and how they are managed, it is clear to me that the progress has occurred only when jointly—the Congress, the tribes, the GAO, and the administration—have reached solutions together. I am very happy that one of the solutions is sitting next to me this morning. And thank you, Mr. Chairman and members of this committee, for giving me the opportunity to introduce and testify in support of Paul Homan, nominee as the first Special Trustee of American Indians.

It is appropriate that this hearing is taking place in September because it was 5 years ago to this month that representatives of the tribes came together and formed the Intertribal Monitoring Association on Trust Funds to assist in correcting the Federal Government's gross mismanagement of our trust funds. It has been a difficult and exhausting 5 years.

For 150 years, while everyone recognized that the Government's mismanagement of the trust funds was a national disgrace, no one was ever able to do anything about it. It came to be seen as one of those untouchable problems; nothing changed, and account holders continued to be victimized by a system that failed to meet the most basic obligations a trustee owes to its beneficiaries.

Practically every Indian family has stories about how it was cheated out of money that was rightfully theirs, but was unable to get anything done. One that comes to my mind is the millions of individual Indian moneys that was lost in failed S&Ls and bogus credit unions.

We are hopeful that this frustration and this unjust era is coming to an end, and that the reason that we have made more progress over the past 5 years than over the past 150 is the extraordinary initiative by the U.S. Congress to work with tribes to solve this problem.

Over the past 5 years congressional committees have held over 15 hearings on the trust fund issue. I believe this committee has held at least four hearings on this issue. In between the hearings there have been an untold number of congressional meetings, phone calls, letters, GAO investigations, all designed to keep the reform moving forward and to prevent the forces that opposed reform from succeeding in blocking progress, as they had for the previous 150 years.

The account holders were deeply moved by the large number of Senators and Congressmen on both sides of the aisle who fought and fought and refused to yield, despite the strong opposition, until

they succeeded in putting into place the framework for reform that we have today. While the agenda for today's hearing is the confirmation of Paul Homan for the position of Special Trustee, it is only appropriate to begin by conveying, on behalf of the account holders, our deep appreciation to all of you for demonstrating such courage.

We would also like to thank the hard-working committee staffers and GAO for all that they have done.

Before leaving this point, I also want to mention that one of those who helped us so much is now engaged in another courageous fight, this time against a serious form of brain cancer. I would like Mike Synar to know that all of us in Indian country are praying for your recovery and looking forward to the day when you will be able to come visit us and receive our personal thanks for all that you have done to help the Indian people.

In regard to today's agenda, the nomination of Paul Homan, I will be brief.

Mr. Homan is everything we dreamed of when we worked with the Congress to shape the Special Trustee title to the Trust Fund Management Reform Act. He has a proven record in turning around troubled financial institutions. He has both private sector and Government experience. He has both managed and examined numerous trust departments. He is a person of high personal integrity. He has demonstrated sensitivity to the desire of tribes to have increased control over their trust funds and trust assets, and to use those assets to promote economic development on their reservations. He has a thorough knowledge and a commitment to the rights of the beneficiaries and the obligations of trustees in a trust relationship.

I am confident he understands that the trust funds are our money, and will have an open-door policy for the account holders.

ITMA was one that submitted Mr. Homan's resume to the Interior Department, and we urged President Clinton to nominate him as a special trustee. Today we have the honor, on behalf of 300 tribal account holders and 300,000 individual Indian account holders, of asking this committee, and then the full Senate, to quickly confirm Mr. Homan so that he can begin working on the many critical issues now facing trust fund management.

I would like to make a personal plea in regard to expediting the confirmation of Mr. Homan. ITMA is having its annual meeting on September 21 and 22. We have set aside the entire first morning to give Mr. Homan the opportunity to present his philosophy and agenda to the tribes and to permit tribal leaders to ask questions of Mr. Homan.

Mr. Homan has been advised by the Department Ethics Officer not to participate in our meetings until he is confirmed. This is the only time all year at which Mr. Homan and a large number of tribal leaders will have the opportunity to dialog at a trust fund meeting. I therefore ask this committee to do everything possible to have Mr. Homan confirmed by the full Senate by September 21.

As my final point I would like to encourage the committee to schedule an oversight hearing next spring. This Special Trustee's success will depend on a number of intangibles, such as the support of Mr. Homan by Secretary Babbitt; the cooperation he re-

ceives from the existing bureaucracy; and his ability to marshal sufficient resources to carry out his difficult mission during a time of large budget cuts and RIFs.

By holding an oversight hearing next spring, this committee will be able to learn how well the Special Trustee approach is working, and determine if any changes are needed in the authorizing legislation.

In conclusion I would like to thank this committee and the Congress for all that they have done, to thank President Clinton for nominating such a highly qualified candidate, and to thank Mr. Homan for his willingness to assume this challenging responsibility.

ITMA, the tribes, and the individual account holders are ready to work with you in any way to help you succeed in your mission. Thank you.

[Prepared statement of Ms. Cobell appears in appendix.]

Senator McCAIN. Thank you very much, and thank you for your very important introduction of Mr. Homan. I appreciate your continued involvement in this very difficult, complex, and tragic situation.

Mr. Homan.

#### **STATEMENT OF PAUL M. HOMAN, SPECIAL TRUSTEE- DESIGNATE, DEPARTMENT OF THE INTERIOR**

Mr. HOMAN. Thank you, Mr. Chairman, and thank you for giving me the opportunity to appear before you today. This will begin what I hope to be a very cooperative and productive relationship with this committee.

And thank you, Elouise, for that very generous endorsement. I really appreciate the help and support that you have been to me throughout this entire process, and I hope that if confirmed, I can live up to your expectations and those of the Indians. I will certainly do my very best to do that.

As you know, Mr. Chairman, the Special Trustee was created out of a longstanding and legitimate concern by the Congress and by the American Indian beneficiaries of the trust programs about the way the Department's trust responsibility for American Indian communities was being administered. I share those concerns. While substantial progress has been made through the dedicated efforts of the Department staff, there are serious problems which remain unresolved. Certain of these problems can be and will be remedied in the near term with appropriate improvements in accounting, auditing, reconciliation in settlement policies and procedures, and operating systems. Nevertheless, even after these initiatives become fully implemented and effective, there will still be significant fundamental and inherent structural, managerial, financial, and operational weaknesses which will continue to expose the Indian trust funds and assets to the type of unacceptable concerns, issues, and problems which prompted the creation of the Special Trustee. These weaknesses must be addressed and the remedies properly funded if they are to be resolved and if the Department is to meet its ongoing trust responsibilities to the Indian communities.

If confirmed, I will produce a timely plan which will deal with the outstanding issues and concerns and which will identify and

subsequently ensure the implementation of reforms necessary for the proper discharge of the Secretary's trust responsibilities. I do not believe the Office of the Special Trustee can be effective without the full participation of the beneficiaries and their representatives. To ensure that participation, I will move quickly to establish and work with the Advisory Board required by the 1994 Reform Act, and will also consult with and seek the advice of ITMA and the Indian tribes and individual Indians, who are the major beneficiaries of the trust funds.

At all times my primary obligation will be to ensure that the best interests of the beneficiaries, the American Indians, are served and served well and efficiently by the Department of the Interior.

After the committee's examination of my personal and professional history, qualifications, and experience, all of which has been provided to you, I hope you will be satisfied with my capacity to perform the duties of the Special Trustee. The position, by law, requires an appointment among individuals who possess demonstrated ability in general management of large governmental or business entities, and particular knowledge of trust fund management, management of financial institutions, and the investment of large sums of money.

I have devoted an entire working career to such endeavors. First as a bank regulator and then as a banker, I have had extensive exposure to the proper and efficient management of oil and gas properties and royalties, timber, farm and ranch properties and leases, mining properties and leases, and investment lending and trust activities which support or derive income from such economic endeavors. Through these experiences I have gained a knowledge and understanding of the financial, operational, and managerial resources which need to be brought to bear for the effective and efficient management of the Indian trust funds and their assets.

While my capacity to perform the job as Special Trustee is for the committee to judge, I want to state in the strongest possible terms my commitment and willingness to serve as Special Trustee. For me it is not only a challenging assignment, but a great opportunity to perform a much-needed public service for a very special beneficiary, the American Indians.

I have from an early age strongly believed in public service and have always answered the call to public service. My first such public service was with the U.S. Army as a volunteer draftee following my graduation from college. After graduate school I joined OCC and spent the next 16 years as a career bank examiner and supervisor. I left OCC in 1982 to pursue a career in banking. In 1990, the Comptroller of the Currency asked me to return to the Government as senior adviser to assist him and OCC during a particularly difficult time for that office and the banking industry. I readily agreed, and stayed until the end of his term, at which time I returned to the private sector.

Now, if confirmed as Special Trustee, I will have once again an opportunity for public service, one which I very much appreciate and welcome.

Finally, Mr. Chairman, let me add a personal note or two. I was raised on a Nebraska farm. With my brothers and sisters, we retained ownership of that farm until earlier this year. I was also

educated in Nebraska. Because of my rural upbringing, I still have a special feel for the land and a longstanding interest in the welfare and concerns of people like the American Indians who derive much of their livelihood from the land. This interest and the values I live by were instilled in me from an early age by my father and mother, who always practiced what they believed and were my best examples of how one should conduct a principled, productive, and successful life. My mother, Margaret Homan, who is 91 years old—and I am sure will be listening in—is still going strong and is still giving me both a good example and welcome advice on how to conduct my life. My wife, Rosella, who is here today, was also raised on a Nebraska farm and was educated in Nebraska. We met in graduate school and married after we graduated. She has always shared and reinforced the same values I have, values which are also a legacy of her parents. She has truly been a strong and contributing partner of mine, both personally and professionally, over the last 29 years.

Our most ambitious goal is to contribute as much to our children, John and Julie, to our families, to our friends, and to society as our parents were able to do.

In closing let me state that I know that many of the issues and problems which continue to impact the ability of the Department to discharge its trust responsibilities are very familiar to you and your staff and of continuing concern to you. While the Department of the Interior and the Special Trustee will necessarily be at the center of the decisions that need to be made to resolve the issues and concerns, I recognize that in the final analysis many of the decisions must be shaped—and their direction must be set—by the Congress.

I also understand the importance of working with the committee and the Congress. I commit to you that I will be available not just to testify before you, but to consult with you and your staff. This is the best way I know to accomplish what I know to be our mutual goal, and that is to achieve the very best in effective and efficient management of the Indian trust funds.

Thank you, Mr. Chairman. I will be glad to submit to questions.  
[Prepared statement of Mr. Homan appears in appendix.]

Senator MCCAIN. Thank you very much, Mr. Homan, and I want to apologize for this short period of time, but I thought that we should go ahead with this hearing so that we can get this thing done. It is clear from Ms. Cobell's comments that time is long overdue for you to get to work.

I will do everything I can to see that Mr. Homan's nomination is approved by the Senate by the September 21, and in order to do so I am going to employ a procedure that the vice chairman established here some time ago, and that is, that in the absence of an objection, the committee will report out your nomination to the floor.

Pending any possible opposition, either from the vice chairman or any other member of the committee, as soon as I go vote right now, I will speak to Senator Inouye who unfortunately was tied up in an appropriations meeting—as you know, we're in that cycle—and I will consult with the other members of the committee so that we can get your nomination to the floor as quickly as possible.

I note the presence of your wife and your two children here, behind you. Is that correct?

Mr. HOMAN. Actually, my wife Rosella is sitting behind me, and my daughter, Julie, is with me today. My son John is in Chicago and works for the Mercantile. He is a trader, or an arbitrager, so he is working today.

Senator MCCAIN. That's spelled t-r-a-d-e-r. [Laughter.]

I want to welcome your family and congratulate them for their participation in what has obviously been a very successful career.

May I just say that we're talking about \$2.1 billion, most of which nobody can trace. We're talking about a big issue here. We're talking about trust obligations, and I don't have to tell you how important this is and, frankly, what a travesty it has been in our dereliction of our duties as trustees of these assets. There is no sense in me reviewing who is culpable here; it has been a subject of 60 Minutes and every other tabloid, as well as print, periodical. You know the problem, and we are going to rely on you to make progress.

I will tell you that, if it is agreeable to you, probably sometime in January or February we will have a hearing so that you can bring us up to date as to your assessment of the situation and where we need to go. We want to work as closely as possible with you and try, in some way, to restore the rightful revenues that the tribes all across America deserve.

I am concerned about how much this is going to cost to get this reconciliation completed, but perhaps you can give us a better idea of that in the months ahead.

I know I speak for Senator Inouye when I tell you we are very interested, we want to work with you, we appreciate your commitment to working with us. I am sorry it has taken so long. I am very deeply appreciative of the efforts of Congressman Synar; we pray for his recovery. If it had not been for him, there is no doubt we would not be where we are today. We appreciate the literally hundreds of hours that he spent on this issue, bringing us this far, and he deserves the credit for whatever accomplishments may follow.

Mr. Homan, I have some written questions that I would like to submit to you, and I would like for you to get them back to us, if you could, in the next few days. They are not particularly complicated questions.

[Questions with responses appear with Mr. Holman's prepared statement in appendix.]

Senator MCCAIN. You are the kind of person we need. You are qualified, and I want to just warn you, from being involved now for 13 years in Native American issues, you are going to face some very deep and puzzling frustrations as you go about this job. At the same time, if there is ever a description of doing the Lord's work, it is in this effort, trying to see that we fulfill the obligations we made to Native Americans by solemn treaty—which obligations, by the way, are under attack as we speak, as you know.

So with that, without objection we will forward Mr. Homan's nomination from the committee to the floor of the Senate, which should take a day or so, and I will consult with the other members of the committee, pending any possible objection from other members of the committee, which I do not anticipate.

With that, I believe I have about 2 minutes left to get over to the floor of the Senate. Again, I want to apologize; I'm not giving you short shrift because of a lack of importance of this issue. I am doing it because I think the first priority is to get you to work.

Mr. HOMAN. Thank you, Mr. Chairman.

Senator MCCAIN. Thank you very much.

Ms. Cobell, thank you very much for being here.

This hearing is adjourned.

[Whereupon, at 9:25 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

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## APPENDIX

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### ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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#### PREPARED STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

At the committee hearing yesterday on the President's nomination of Paul Homan to be Special Trustee for American Indians, I announced that, absent an objection from any committee member, I intend to ask the unanimous consent of the Senate that the Committee on Indian Affairs be discharged of further consideration of Mr. Homan's nomination, that the Senate consider the nomination as having been favorably reported by the Committee on Indian Affairs, and that the Senate immediately proceed to confirm Mr. Homan's nomination.

I want to expedite the nomination for several reasons. There is no known opposition to the nomination; Mr. Homan enjoys unanimous support from all interested parties. The hearing record of the committee contains ample evidence of the qualifications of the nominee. Tribes and the Interior Department have requested prompt confirmation. Nearly 1 year has passed since enactment of the act establishing the Special Trustee and much work needs to be done quickly.

If you object to proceeding in this way, I ask that you have your staff inform Philip Baker-Shenk, General Counsel to the committee [224-2251], of your objection before noon on Friday, September 15, 1995. Absent an objection, I will make the unanimous consent of the Senate sometime Friday afternoon, September 15, 1995.

If we can move the nomination in this manner, I will cancel the business meeting markup now scheduled to immediately precede the oversight hearing on the National Indian Forest Resources Management Act on September 20, 1995. Thank you.

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#### PREPARED STATEMENT OF HON. PAUL WELLSTONE, U.S. SENATOR FROM MINNESOTA

I want to commend you and the vice chairman for convening this hearing today. I will be brief in my remarks.

Yesterday I had an opportunity to visit with Mr. Homan. I found him to be very committed to getting the management of Indian Trust Funds in order at the Department of the Interior. I wish him well. It will be a monumental undertaking.

I also found Mr. Homan to be open to new ways of thinking about the management of Indian Trust Funds. He assured me that he would look at the statutory barriers that exist which prevent tribes and individual members from using their funds in a way that can fuel the engine of economic development on Indian reservations. Mr. Homan further assured me he was committed to working with the tribal leaders and the Intertribal Monitoring Group on all aspects of trust fund management.

Mr. Chairman, I believe the President and Secretary Babbitt have made an excellent choice in nominating Paul Homan to be the Special Trustee for Indian Trust Funds. He Brings much needed experience to the position and in my visit with him, I found him to be visionary and creative in his thinking.

Mr. Chairman, it is because of the aforementioned reasons that I intend to vote yea on this nomination at next week's committee business meeting.

Thank you Mr. Chairman. I would ask that my remarks be made part of the record.

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PREPARED STATEMENT OF ELOUISE C. COBELL, CHAIR, INTERTRIBAL MONITORING ASSOCIATION ON INDIAN TRUST FUNDS

Mr. Chairman and members of the committee, I appreciate this opportunity to testify in support of Paul Homan's nomination as the first Special Trustee for American Indians. This is a significant and happy occasion for Indian tribes and Indian people.

I am Elouise Cobell, Chair of the Intertribal Monitoring Association on Indian Trust Funds [ITMA], which represents 84 tribes that, together, own the vast majority of the tribal funds managed in trust by the United States.

As this committee knows, the Federal Government's mismanagement of the monies it holds in trust for 300 tribes and 300,000 individual Indians, has been a national disgrace. For over 150 years, numerous reports highlighted the continued failure of the Federal Government to meet the most minimal standards established for fiduciaries. However, for most of those years, nothing was done to correct the problem and it came to be considered one of intractable problems that everyone talked about but no one did anything to correct.

However, about 10 years ago, the U.S. Congress began an in-depth and multi-pronged assault on the problem. It began with a series of oversight hearings by Congressman Synar's Government Operations Subcommittee on Energy, Environment and Natural Resources. The House Interior Appropriations Committee made trust funds the first item in its annual BIA appropriations hearings. This committee and the House Indian Affairs authorizing subcommittee held a large number of oversight hearings and legislative hearings and then pushed through the enactment of the 1994 Indian Trust Fund Management Reform Act, the first effort to legislate corrective action in 150 years.

Because of this extraordinary effort by the Congress, I believe we are on the verge of solving this intractable problem. While a great deal of work still needs to be done, particularly in the area of accounts receivables and trust asset management, Congress has put in place the framework that, over the next few years, should provide Indian account holders with an effective system for the management of their accounts once the funds are collected by the Secretary.

Pursuant to the standards established in Title I of the Reform Act, and with funds provided by Congress, OTFM is staffing up and putting into place trust management systems that are comparable to those used in the private sector. The Reform Act, coupled with the 1994 Self-Determination Act Amendments and Self-Governance Act, provided a range of options for those tribes that wish to play a greater role in the management of their trust funds. The options run from just advising OTFM on how the tribe wants its funds managed, all the way to authorizing tribes to remove their funds from trust status and manage the funds themselves.

In sum, more progress on this intractable problem has been made in the past 5 years than in the past 150. On behalf of all of tribal and individual account holders, I would like to express my deep appreciation to this committee, the other committees that have worked on this problem, and the many Senators and Congressmen who refused to let go of this issue until progress was made. The effort was truly a profile in courage by the Congress.

While I am on this point, as we all know, one of the warriors who helped carry this battle for us is now engaged in another courageous fight. We would like Mike Synar to know that all of us in Indian country are praying for your recovery and look forward to the time when you will be able to come visit our Tribes so we can personally thank you for all you did to make today possible.

In regard to the purpose of today's hearing, the keystone to this entire effort is the Special Trustee. All of the reform efforts will be successful only if there is capable and accountable management at the highest levels of the Department of the Interior. The Reform Act created the position of Special Trustee to provide this high level management and now the President has nominated a very highly qualified person for that position. Paul Homan has a proven track record in turning around troubled financial institutions. He has hands-on experience with trust fund and trust asset management. He has over 28 years of Government experience. And, finally, he is a man of high personal integrity.

We are also impressed by Mr. Homan's private sector experience in the operation of financial institutions. ITMA has long advocated that the long-term solution for

trust funds, even for those account holders who do not want to exercise greater control over their funds, is to move the funds closer to the local Indian communities, where the funds can help develop the local economy. For example, many of the trust fund functions, we believe, could ultimately be carried out by reservation-based community banks. Mr. Homan has expressed enthusiasm for exploring these ideas with the tribes and clearly has the expertise from the years he has spent as CEO of banks throughout the country. For all these reasons, ITMA strongly endorses Mr. Homan for the position of Special Trustee.

Also, we urge this committee and then the full Senate to act on Mr. Homan's confirmation as soon as possible. There are some critical issues that need the Special Trustee's immediate involvement. The Senate has proposed the transfer to the Special Trustee of the funds appropriated for the operation of OTFM. ITMA strongly supports this action and urges that the Senate approach be adopted at conference. However, there must be a confirmed Special Trustee in place when the Interior Appropriations bill passes, so that OTFM will have someone to report to.

Also, critical issues involving the tribal reconciliation are coming to a head in the next 30 days. We want to be sure that the Department fairly sets out the deficiencies in its reconciliation approach when it sends the results to the tribes. We therefore need the Special Trustee on board as soon as possible to insure the results are presented in a full and frank manner.

I would like to make a personal plea in regard to expedited confirmation of Mr. Homan. ITMA is having its annual meeting on September 21 and 22. We have set aside the entire first morning to give Mr. Homan an opportunity to present his philosophy and agenda to the tribes, and to permit tribal leaders to ask questions of Mr. Homan. Unfortunately, Mr. Homan has been advised by the Department ethics officer not to participate in our meeting until he is confirmed. This is the only time all year at which Mr. Homan and a large number of tribal leaders will have the opportunity to dialog at a trust funds meeting. It also leaves a hugh hole in our agenda. I therefore ask this Committee to do everything possible to have Mr. Homan confirmed by the full Senate by September 21.

With Mr. Homan's confirmation, we will have completed a long, tortuous, but successful climb out of the abyss. However, neither Congress nor the tribes can sit back and relax at this point, because the success of the Special Trustee is not guaranteed. We therefore recommend that the committee hold an oversight hearing six months from now to see if the position was properly crafted and if it is functioning effectively. There are several questions that need to be explored.

First, it was not possible in the legislation to give the Special Trustee the complete power and independence that would have been desirable in order to insure his effectiveness, at least not without destroying the integrity of the Interior Department structure. After a great deal of struggle with this issue, it was concluded that regardless of what powers Congress was able to give or not give the Special Trustee, his success will ultimately depend on the support the Special Trustee receives from the Secretary.

Given how quickly the Interior moved to send a potential Special Trustee nominee to the White House, it is clear that the Department now fully supports this concept. However, because Secretary Babbitt strongly opposed the Special Trustee provision when the Reform Act was before Congress, the Secretary never provided any testimony on how he sees the Special Trustee operating within the Departmental structure. It is therefore not clear how the Secretary intends for the Special Trustee to relate to other Departmental officials, what resources he will provide the Special Trustee, or how strongly he will back the Special Trustee in battles with the entrenched bureaucracy. Therefore, the oversight hearing next year is needed to determine if the Special Trustee is receiving the backing he needs from the Secretary to successfully carry out the tasks assigned to him in the legislation.

Second, there is a need to begin exploring the problems that exist in the Department's mismanagement of trust assets—whether the land, minerals, timber, and other resources that are the source of much of the deposits into the trust funds, are being properly managed. This includes such issues as whether the assets are being properly managed, whether the income is being collected in a timely and accurate manner, and what options exist for addressing the fractionated heirship problem. The Special Trustee is tasked with developing a comprehensive strategic plan for the management of trust assets as well as of trust funds. An oversight hearing would help to provide the Special Trustee with guidance and advice on this difficult area.

Those issues need to be dealt with in the future. However, the primary message we wish to deliver today is our deep appreciation to this committee and the other committees of Congress for all the work you have done to bring us to this point; our appreciation to President Clinton for nominating such a highly qualified can-

dicate for Special Trustee; and our appreciation to Mr. Homan for agreeing to take on this challenging assignment. ITMA will continue to work in a constructive manner with all of these parties to complete the task of implementing the twin principles of trust responsibility and self-determination in the trust fund and trust asset areas.

Thank you.

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PREPARED STATEMENT OF PAUL M. HOMAN, NOMINEE FOR SPECIAL TRUSTEE FOR AMERICAN INDIANS

Mr. Chairman, Senators, thank you for giving me this opportunity to appear before you today. This will begin what I hope to be a very cooperative and productive relationship with this committee.

I am honored to appear before this committee and am grateful to President Clinton and to Secretary Babbitt for giving me the opportunity, subject to the U.S. Senate's approval, to serve as the first Special Trustee for American Indians.

I am also deeply honored that many of the Indian tribes and, especially, the Inter-tribal Monitoring Association on Indian Trust Funds (ITMA) chose to endorse my nomination. As you know, ITMA represents numerous tribes, many of which are the principal beneficiaries of the trust funds administered by the Department of the Interior, and works with the Congress and the Department to improve the administration of the Indian trust funds. Through its chair, Elouise Cobell, ITMA asked me to consider interviewing for the Special Trustee position and subsequently recommended me to Secretary Babbitt and President Clinton. I very much appreciate their endorsement and the help, support, and advice I have received from ITMA and many of the Indian tribes and their representatives. If confirmed, I will do my very best to live up to the confidence and trust they have placed in me.

The position of Special Trustee for American Indians is a new one and was created by the Congress in the 1994 American Indian Trust Fund Management Reform Act. The Special Trustee is charged with developing a strategic plan for the proper and efficient discharge of the Secretary's responsibilities for the proper management of oil and gas, timber, ranch and farm land, and other Indian trust assets the Department of the Interior holds and manages. The Special Trustee is specifically assigned responsibility for ensuring the Bureau of Indian Affairs [BIA], Minerals Management Service [MMS], and the Bureau of Land Management [BIM] establish, maintain, coordinate and integrate policies, procedures, systems and practices related to the discharge of the Secretary's trust responsibilities. In addition, the Special Trustee will ensure that BIA properly accounts for the daily and annual balance of all funds held in trust by the United States for the benefit of an Indian tribe or individual Indian.

As you know the Special Trustee was created out of long-standing and legitimate concerns by the American Indian beneficiaries of the trust programs and the Congress about the way the Department's trust responsibility for American Indian communities was being administered at his own confirmation hearing, Secretary Babbitt recognized the Department's trust responsibility for American Indian communities as one of its most important functions and gave his commitment to "deal openly, fairly and frankly with Indian tribes on a government to government basis" and to "ask for their help in locating problems and designing solutions." Since the passage of the 1994 Reform Act, the Secretary and the Department of the Interior have made much progress in bringing the situation under control, particularly by improving trust fund reconciliation, accounting, systems and internal controls. However, as the committee knows, much stills needs to be done.

I share the legitimate concerns of the American Indian beneficiaries and the Congress about the administration of the Department's trust responsibilities. While substantial progress has been made through the dedicated efforts of the Department's staff, there are serious problems which remain unresolved. Certain of those problems can be and will be remedied in the near term with appropriate improvements in accounting, auditing, reconciliation and settlement policies and procedures and operating systems. Nevertheless, even after these initiatives become fully implemented and effective, there will still be significant, fundamental and inherent structural, managerial, financial and operational weaknesses which will continue to expose the Indian trust funds and assets to the type of unacceptable concerns, issues and problems which prompted the creation of the Special Trustee. These weaknesses must be addressed and the remedies properly funded if they are to be resolved and if the Department is to meet its ongoing trust duties and responsibilities to the American Indian communities.

I also share the Secretary's commitment to deal openly and frankly with the American Indian communities and to seek their help in identifying problems and designing solutions.

If confirmed, I will produce a timely plan which will deal with the outstanding issues and concerns and which will identify and subsequently ensure the implementation of the reforms necessary to ensure the proper discharge of the Secretary's trust responsibilities to Indian tribes and individual Indians. As the name Special Trustee implies and as the Congress intended, I will focus specifically on those Departmental activities which affect the Secretary's special fiduciary relationship with the American Indian community.

I do not believe the Office of the Special Trustee can be effective without the full participation of the beneficiaries and their representatives. To ensure that participation, I will move quickly to establish and work with the Advisory Board required by the 1994 Act and will also consult with and seek the advice of ITMA and the Indian tribes (directly and through their representatives) and Individual Indians who are the major beneficiaries of the trust funds.

At all times, my primary obligation will be to ensure that the best interests of the beneficiaries, the American Indians, are served and served well and efficiently by the Department of the Interior.

After the committee's examination of my personal and professional history, qualifications and experience, I hope you will be satisfied with my capacity to perform the duties of the Special Trustee. The position, by law, requires an appointment from among individuals:

Who possess demonstrated ability in general management of large governmental or business entities and particular knowledge of trust fund management, management of financial institutions, and the investment of large sums of money.

I have devoted an entire career to such endeavors. During the last 5 years of my 17 years with the U.S. Comptroller of the Currency [OCC], I directly managed OCC's examination and supervision activities of the Nation's 4,700 national banks, which included the examination and supervision of the trust activities of some of the largest trust businesses in the world. I also directly managed problem bank resolutions for OCC for over 7 years; so the techniques used to identify and resolve financially related problems are very familiar to me.

During my 12 years in the private sector, both as a banking consultant and as a bank manager, I specialized in problem bank resolutions. All of the financial institutions which I helped manage were successfully rehabilitated. I was chief executive officer of two major regional banks, both of which had trust company assets under management which exceeded those presently administered by the Department of the Interior. I was also the chief executive officer of a thrift which liquidated or otherwise resolved over \$1 billion in distressed real estate, ranch, farm and oil and gas properties in Texas. I was the executive vice president of a bank which liquidated or otherwise resolved for the FDIC over \$5 billion in distressed oil, gas, energy, commercial and real estate properties.

Bank examiners and supervisors and managers of banks have the same overall objective in managing assets directly and in trust in the best interests of beneficiaries, depositors, customers and shareholders. Both as a bank regulator and as a banker, I have had extensive exposure to the proper and efficient management of oil and gas properties and royalties; timber, farm and ranch properties and leases; mining properties and leases; and investment, lending and trust activities which support or derive income from such economic endeavors. Through these experiences, I have gained a knowledge and an understanding of the financial, operational and managerial resources which need to be brought to bear for the effective and efficient management of the Indian trust assets and funds.

As a public official and as the chief executive officer of three public companies, my performance throughout my career was both visible and measurable. Therefore, my track record in both the public and private sector is well known. I hope and believe it is well regarded by those I have had an opportunity to work with and for and, particularly, by those I have had an opportunity to serve. I hope the committee will agree that an individual with my professional qualifications and experience should have the capacity to perform the job of Special Trustee.

While my capacity to perform the job of Special Trustee is for the committee to judge, I want to state in the strongest terms possible my commitment and willingness to serve as Special Trustee. For me it is not only a challenging assignment, but a great opportunity to perform a much needed public service for a very special people, the American Indians.

I have, from an early age, strongly believed in public service and have always answered the call to public service. My first public service was with the U.S. Army as a volunteer draftee following my graduation from college. After receiving an honorable discharge and after attending graduate school and receiving my masters degree in economics, I joined OCC and spent the next 16 years as a career bank examiner and supervisor. I left OCC in 1982 to pursue a career in banking. In 1990, The Comptroller of the Currency asked me to return to OCC as senior adviser to assist him and OCC during a particularly difficult time for the banking industry. I readily agreed and stayed until the end of his term, at which time I returned to the private sector. Now, if confirmed as Special Trustee, I will have another opportunity for public service, one which I very much welcome and appreciate. You have my assurance that, if confirmed, I will commit to bring the same dedication, independence, integrity and professionalism to the job that I brought to my previous 20 years of public service and to the banks and consulting clients I have been privileged to serve while in the private sector.

I have long thought that if one applies a strong and vigorous work ethic, extensive knowledge of the subject matter, honesty, integrity, and professionalism, along with commonsense and good judgment, effective results are almost always assured, whatever the challenge happens to be. I have also believed, with Thomas Jefferson, that the "great principles of right and wrong are legible to every reader; to pursue them requires not the aid of many counselors." I have tried to live my life and conduct my career with these values always in mind. I firmly believe that whatever success I have had was the outgrowth of these inner values. If confirmed, I will try to apply them once again to the job of Special Trustee.

I was raised on a Nebraska farm which I helped manage after my father's death in 1973. With my brothers and sisters, we retained ownership until the farm was sold earlier this year. I was also educated in Nebraska because of my rural upbringing, I still have a special feel for the land and a long-standing interest in the welfare and concerns of people, like the American Indians, who derive their living from the land. This interest and the values I have just mentioned were instilled in me from an early age by my father and mother who always practiced what they believed and were my best examples of how one should conduct a principled, productive, and successful life. My mother, Margaret Homan, who is 91 years old, is still going strong and is still giving me both a good example and welcome advice on how to conduct my life. My wife, Rosella, was also raised on a Nebraska farm and was educated in Nebraska. We met in graduate school and married after we graduated. She has always shared and reinforced the same values I have, values which were also a legacy of her parents. She has truly been a strong and contributing partner of mine, both personally and professionally. Our most ambitious goal is to contribute as much to our children, John and Julie, to our families, to our friends and to society as our parents were able to do.

In closing, let me state that I know that many of the issues and problems which continue to impact the ability of the Department to discharge its trust responsibilities are very familiar to you and your staff and of continuing concern to you. While the Department of the Interior and the Special Trustee will necessarily be at the center of the decisions that need to be made to resolve the issues and concerns, I recognize that in the final analysis many of the decisions must be shaped and their direction must be set by Congress. In this regard, of utmost importance will be appropriate congressional appropriations which will be critical to the success of the Office of Special Trustee and the Department of the Interior if we are to ensure the implementation of all the reforms necessary for the proper discharge of the Secretary's trust responsibility to the Indian community.

I also understand the importance of working with the committee and the Congress. I assure you that if confirmed, I will be sympathetic to many of your concerns and those of your constituents and particularly those of the Indian beneficiaries. I commit to you that I will be available, not just to testify before you, but to consult with you and your staff. This is the best way I know to accomplish what I know to be our mutual goal and that is to achieve the effective and efficient management of the Indian trust funds and assets in the best interests of a very special type of beneficiary, the American Indians.

#### QUESTIONS FOR PAUL M. HOMAN, NOMINEE FOR SPECIAL TRUSTEE

**Question:** Your record of restructuring and reorganizing institutions with serious financial troubles in Washington DC, Florida, Illinois, and Nevada is impressive. But, perhaps those challenges are dwarfed by what you would face as Special Trustee. The BIA's problems are legion. What aspects of your background and experience

do you believe qualify you to deal with the unique challenges presented by the BIA bureaucracy and Reservation realities?

Answer: I do not discount in any way the immense challenges inherent in the Department's past, present, and prospective management and administration of the Secretary's trust responsibilities. I am also realistic enough to know that I will be unable, by myself, to resolve all of the longstanding problems which continue to exist in the administration of trust funds and other resources.

My interests, qualifications and background, however, should enable me to make a contribution toward the resolution of those problems. In each of the financial institutions I have helped restructure in the private sector, I assembled a team, the members of which were balanced between competent professionals within the organization and specialists from outside the organization who were skilled in restructuring and re-engineering troubled financial institutions. Together, we were successful in restructuring five major financial institutions.

If confirmed, I intend to use the same approach at the Department of the Interior. To be effective, I believe it will be necessary to acquire a team of 8 to 10 professionals. Three or four of these individuals should be re-engineering specialists recruited from outside the Department either as contractors or permanent personnel, as the Department does not possess individuals with the required skills. The rest of the team will be recruited from competent individuals within the Department of the Interior.

Using this approach, the teams I assembled successfully confronted and resolved similar and at times larger and more complex problems in the management of asset, financial and trust problems than presently exist at BIA. We had exposure to the proper and efficient management of oil and gas properties and royalties and in resolving huge problems in this area; for example, Continental Illinois was the world's largest energy lender when it failed in 1984. Over the next 3 years I helped a management team which successfully liquidated over \$5 billion of distressed properties for the FDIC and the successor organization, Continental Bank. At banks in Nevada, Florida, Texas, Washington DC, and London, England, I led teams which successfully resolved problems associated with timber, farm, ranch, mining, and oil and gas properties, commercial ventures of all types and similar assets held in trust. The trust assets of the Nevada bank exceeded \$1 billion. I helped manage trust assets in the Florida and Washington DC banks which exceeded \$5 billion at each bank. We successfully liquidated a United Kingdom bank and portfolio which had immense real estate problems which exceeded anything I have seen in the United States.

In addition, while the BIA may indeed have unique bureaucratic characteristics, I have 18 years experience in dealing with another very large and bureaucratic organization, the U.S. Treasury.

Through these experiences, I have gained a knowledge and an understanding of the financial, operational and managerial resources which need to be brought to bear for the effective and efficient management of the American Indian trust assets and funds. With help and support from the Secretary, the Department of the Interior, the Congress and the Indian beneficiaries, I am confident that, together, we can effectively deal with the challenges and realities of the present situation.

**Question:** How do you expect to achieve what you call effective coordination within the Department's various agencies when there is an inherent conflict between the interests of the Indians, the Minerals Management Service, the Bureau of Land Management, and the Department as a whole?

Answer: In my limited review and observation of inter-Departmental and inter-Bureau/Agency relations to date, I have not detected actual conflicts or other unresolvable impediments which would preclude effective coordination between the Department, the Bureaus/Agencies and the Indians. However, there are inherent legal conflicts which should be manageable consistent with the Special Trustee's independent responsibilities.

While there may be tactical differences in approach by and between groups, all seem to be committed, in principal, to the resolution of the problems confronting the Department and the BIA. It is this commitment that gives me confidence that effective coordination and cooperation can be achieved.

This coordination and cooperation are essential requirements of the strategic plan proposal, discussed below, which will provide the uniform guidance, direction and framework for the individual Bureaus and Services to work together to solve a common problem.

**Question:** As Special Trustee, you will not have direct line authority over BIA, BLM or MMS officials. Have you received any specific expressions of support from Secretary Babbitt that lead you to believe the Departments line officers will implement your efforts to reform Indian trust asset management?

Answer: Through the Secretary's 1994 Reform Plan which addressed substantially all of the Indian trust management issues at the time and in other initiatives, the Secretary has directly expressed his support in reforming Indian trust management.

In addition, the Secretary and I are agreed in principle as to how I am to proceed with the preparation and proposal of the comprehensive strategic plan, part of which will identify all reforms to the policies, procedures, practices, business processes and systems of the Department, the Bureau of Indian Affairs, the Bureau of Land Management, and the Minerals Management Service necessary to ensure the proper and efficient discharge of the Secretary's trust responsibilities. Upon his approval of the Strategic Plan and that of the Administration and the Congress, I expect the Plan will be implemented by the affected Bureaus.

Although I will not have direct line authority over BIA, BLM, or MMS, the Secretary has made it very clear that his trust responsibility to Native Americans extends to each of the Bureaus of the Department and is not confined solely to the BIA. Furthermore, the Secretary has established an Indian Minerals Steering Committee to coordinate the approaches to trust asset management, particularly leasing, inspection, and revenue collection, being undertaken by the three bureaus.

The 1994 Reform Act gives the Special Trustee special authorities to review the programs and budgets of these bureaus as they relate to the Secretary's trust responsibilities. If confirmed, I intend to exercise those authorities and to evaluate the current efforts and strengthen them if I find that to be necessary. I will be working closely with the heads of the three Bureaus to ensure that together we achieve the Secretary's objective of sound, professional management of these special assets.

**Question:** The committee is informed that the BIA today lacks even the most basic "accounts receivable system" to determine if a lessee of Indian land or resources has in fact made required lease payments. How quickly can you get such a system in place?

Answer: In general, the present accounts receivable systems are not automated or integrated to an extent that permits enough of an audit trail for prudential verification and reconciliation, nor do the systems facilitate or permit efficient or effective quality audits which would provide reasonable assurance that all lease payments are, in fact, made as agreed. As such, the present systems are unacceptable and will remain unacceptable until the systems are automated and integrated.

The computer based systems accounts receivable capability for Indian trust management programs consists of 2 parts:

The first part is an accounts receivable module and database that, together with accounts payable, general ledger modules and other accounting modules, form a fairly standard automated account system. What is still needed are updates, modernization and integration of present systems and an accounts receivable module, as part of a general accounting package, that can be obtained and customized for tribal-IIM accounting purposes from vendor resources. This can become operational very quickly; however, the existing trust funds management appropriation may not be sufficient to acquire the vendor software and software customizing services.

The second part is an accounts receivable front-end data system that uses lease-contract and ownership data for trust income verification, compliance and billing purposes, trust income allocation purposes, and statement of trust income purposes. Imaging capability and other refinements would permit quality assurance audits and market rate of return assurance as well. The existing trust services appropriation is not sufficient to develop the integrated trust asset management and trust title systems software required for the accounts receivable front-end data system; the Land Records Improvement program requested an increase of \$2.9 million in FY 1996 for phases 1 and 2 of the Lands Records Management Project which would begin the automation of these processes, but this request has not been appropriated.

The complete automation and integration of the Accounts Receivable systems, including the Lands Records and Title recordation and certification processes and the Trust Asset and Leasing management processes just described are conditions precedent to the ultimate resolution of the vast majority of the accounting, reconciliation, verification, audit, quality assurance, operational efficiencies and operational problems and issues which continue to confront the trust management services provided by the Department. If Congress appropriated nothing else for systems improvements, it is critical for Congress to authorize and appropriate the \$25 million to \$30 million and the staff necessary to complete this automation and integration initiative. With such immediate support, the project could be completed in 24 to 30 months using either commercially available systems, modified in house systems or a combination of both.

The solution to many of the long-standing operational problems and many other trust management problems which the Department and the BIA must resolve depends on the Congress providing the necessary funding and legislative support. The

development and implementation of these automated trust funds and asset management tools is a critical element of any solution.

**Question:** At the same time that tribes and individual Indian businesses have difficulty securing capital investment for economic development on Indian Reservations, more than \$2 billion is sitting in BIA trust fund investments in New York City, Los Angeles, or other urban centers far from Indian country. Do you have any specific ideas about how these trust funds could be invested in ways that help leverage economic development on Reservations without inappropriate risk?

**Answer:** My limited review of the investment of the trust funds disclosed that the trust funds are invested in legally permissible securities, which are placed in the market using competitive bids from financial institutions. There may be ways to leverage these funds to promote economic development, although I have not had the time to research what the options are or whether or how they could be applied. However, as part of the strategic plan, I intend to identify options for the investment of the Indian tribes trust funds, consistent with the Secretary's trust responsibilities, in ways that will help promote economic development in their communities.

**Question:** Committee has been informed by tribes that the BIA allows thousands of acres of Indian trust land to go unleased each year, permitting trespassers to use it at no cost. Do you have an specific ideas on how to address this problem?

**Answer:** The automated and integrated accounts receivable systems, including title recordation and certification processes and trust asset and leasing management processes, mentioned in response to Question 4, when and if completed, will permit quality audits and reviews to ensure that Indian trust lands are fully leased to the extent practicable at market rates to maximize the return to the Indian beneficiaries.

Historically, part of the problem with keeping the Indian lands fully leased and productive is the high degree of fractionation of interests in trust lands. As lands become more and more fractionated, they become more and more difficult to lease. The solution is to clean up the backlog of probate cases and to work with the tribes and the Congress to pass legislation to solve the fractionated heirship problem. The fractionated heirship problem is at the core of many of the problems of trust funds and trust asset management.

**Question:** In your written answers to the questions posed to you on August 31, 1995, you stated that some of the Department's reconciliation problems "can be and will be remedied in the near future." What specific improvements do you envision and when will they be operative?

**Answer:** Pursuing on an expedited basis the automation and integration of the accounts receivable systems, title recordation and certification processes and trust asset and leasing management processes mentioned in response to Questions 4 and 6, will permit the early resolution of most of the reconciliation problems which continue to confront the Department.

In addition, the modern trust fund accounting systems installed by the Office of Trust Funds Management early this year have already substantially reduced tribal account reconciliation exceptions and problems. With further training of both OTFM staff and tribal users, reconciliation problems should be reduced to something approaching private trust company industry norms. This modern accounting system is already providing tribes with more timely and reliable information about their accounts than they have ever received. Furthermore, the system is comparable to those systems used by private sector trust companies and permits vastly improved service to the tribes.

**Question:** In your view, should the BIA give Indian and tribal account holders a greater role in management of their trust funds than they now have?

**Answer:** Yes; under title II of the 1994 Reform Act, Indian tribes will soon have the ability to submit a plan to withdraw some or all funds held in trust by the United States, subject to the Secretary's approval. Implementing regulations have been drafted and, after consultation with Indian groups scheduled for next week, will become final very soon. I believe, with the Secretary and the Congress, that when funds are withdrawn, any trust responsibility or liability with respect to such funds should cease.

In addition, one of the options which could be explored consistent with such self-determination plans would be for the BIA and/or the Office of Trust Funds Management to act in an agency capacity. Under this arrangement the tribe would have management discretion over the investment of trust funds and could direct the BIA to invest the funds as the tribes saw fit. BIA would account for investments, act as a custodian for the assets and otherwise perform an agency role similar to that of a private trust company. Under such an arrangement, however, it must be legally agreed by both parties that the risk of failure, loss and liability is with the tribe,

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not the United States. There are other options to bring the management of the trust funds closer to the Indian beneficiaries, and I will be glad to work with the committee and the Department in identifying them and in exploring their possible use.

**Question:** Are the amounts requested by the President for the Office of the Special Trustee in fiscal year 1996 sufficient to enable you to do your job? If not, which of your responsibilities will you be unable to complete, and describe what, if any, effort has been made by the Department to inform the Appropriations Committees of this deficiency?

**Answer:** The President's Budget requested an increase of \$447,000 and 4 FTEs to provide for the new Office of the Special Trustee. This amount was formulated shortly after the passage of the reform act and prior to my nomination to this position, so there was not the opportunity for a thorough development of the request. It is my personal view, that additional resources, beyond the amounts requested in the Office of the Secretary, will be necessary to carryout the work that I believe is necessary.

I plan to work with the administration to assure that the funding necessary to perform the tasks that lie ahead is fully adequate. Currently, there are varying amounts for the Office of the Special Trustee pending before the Congress and the Congress provides some flexibility in how these funds may be used once they are appropriated. It is the task of the Congress to decide what level of funding it believes is appropriate for this and other programs, and for the President to approve or disapprove of the appropriations bills ultimately presented to him. As I have not been confirmed, I have not informed the Department of a deficiency and, to my knowledge, the Department has not informed the Congress.

If confirmed, I intend to use the same approach at the Department of the Interior as I have used in restructuring five private sector financial institutions (See also my response to Question 1). To be effective, I believe it will be necessary to acquire a team of 8 to 10 professionals. Three or four of these individuals should be re-engineering specialists recruited from outside the Department either as contractors or permanent personnel, as the Department does not possess individuals with the required skills. The rest of the team can be recruited from competent individuals within the Department of the Interior.

In my personal opinion based on my limited review of the potential requirements of the Office, the Office of the Special Trustee will require the staff mentioned above plus clerical support and an annual appropriation of \$2.5 million, which includes about \$450,000 for the Advisory Board. In addition, \$1 million per year for three years will be needed for an outside contractor to assist the Office of the Special Trustee in developing and implementing the comprehensive strategic plan and the consolidated budget. If confirmed, I will make such a request of the Department of the Interior and the Congress, should that be required, to appropriately fund the Office of the Special Trustee and the strategy and team I have in mind.

**Question:** As we understand it, the Office of Trust Funds Management is now limited by law to investing Indian Trust funds only in government-guaranteed instruments such as U.S. Treasury notes or certificates of deposit. Do you believe it would be good public policy to legislatively authorize the Office to invest trust funds in a broader range of investments? Is so, what specific instruments would you suggest?

**Answer:** In principle, I believe it may well be both desirable and good public policy to authorize the Office to invest trust funds in a broader range of investments, provided such can be done consistent with the Secretary's trust responsibilities and provided such investments stay within acceptable risk parameters. Certain private sector mutual funds and certain bank trust department collective investment funds use certain low risk and conservative investment criteria which might be studied for possible adaptation for the Indian trust funds.

I have not had the time to research what additional options may exist or whether or how they could be applied. However, as part of the strategic plan, I intend to identify options for the investment of the Indian tribes trust funds for consideration by the Secretary and the Congress.

**Question:** Now that the reconciliation process is coming to a close, what are your views on what appropriate settlement process should be prepared to resolve questions about the accuracy of account balances identified in the reconciliation reports?

**Answer:** The 1994 Reform Act requires a Secretary's Report to Congress by May 31, 1996. Among other things, a Secretary's statement is required for each disputed account outlining efforts the Secretary will undertake to resolve the dispute. This strongly implies a formal settlement and/or arbitration procedure be established. The GAO has recommended a legislated settlement process and the Department is presently exploring various alternatives. I have nothing further to offer at this time, except to state that an appropriate settlement process should be prepared to resolve

the reconciliation disputes. There should be clear and well defined procedures in place and disclosed to the tribes by the time the reconciliation statements are sent to them. This will reasonably assure that the tribes understand their rights in making determinations as to whether to accept, dispute, settle, arbitrate or litigate the results of the reconciliation process.

**Question:** Do you have any further thoughts at this time on how the management challenge of fractionated interests can be resolved?

**Answer:** The fractionated heirship problem is at the core of many of the problems of trust funds and trust asset management. Historically, part of the problem with keeping the Indian lands fully leased and productive is the high degree of fractionation of interests in trust lands. As lands become more and more fractionated, they become more and more difficult to lease. Fractionation also adversely affects timely and accurate recordation and certification of title documents and probate adjudications. This in turn adversely affects the accurate and timely disbursement of trust income. Moreover, the problem of fractionation continues to worsen. The cost of maintaining heirship records and administering the land is inordinately expensive for the BIA. Approximately 50-75 percent [\$33 million] of the BIA's realty budget goes to administering these fractional interests. Other programs are, likewise, adversely impacted, for example, trust funds, forestry, and range management, transportation, social services, et cetera. Utilization and/or conveyance of the fractionated property by owners is also difficult because of the need to secure the consent from the numerous other owners.

The ultimate solution to the fractionation problem is to clean up the backlog of probate cases and to work with the tribes and the Congress to pass appropriate legislation. Given the severity of the fractionation problems and the Ninth Circuit Court of Appeals ruling of unconstitutionality of the escheat provisions of the Indian Land Consolidation Act in the case of *Youpee v. Babbitt*, a purchase program appears to be the most viable legislative option. Financing alternatives are worthy of further exploration. At the same time, statutory limitations on inheritance of property in trust will be essential.

In the meantime a first step toward reducing the fractionation problem is already available. The automated and integrated accounts receivable systems, including lands records and title recordation and certification processes and trust asset and leasing management processes, mentioned in response to Question 4, when and if completed, will permit full automation of these processes. Even if the fractionation problem continues for a time while it awaits a legislated solution, a fully automated and integrated system will greatly speed the lands records and title recordation and certification processes and the probate process and reduce the adverse impact fractionation is having on the trust management process. Importantly, the whole automated and integrated accounts receivable system can be purchased for less than the \$33 million annually being spent by BIA to administer the fractionated interests.

**Question:** The committee is informed that the BIA's Office of Trust Funds Management has recently installed a new trust fund accounting system. Have you had an opportunity to review it, and if so, what is your assessment of it?

**Answer:** A modern trust fund accounting system was installed by the Office of Trust Funds Management early this year. I conducted a limited review on-site. I understand that the new system has already substantially reduced tribal account reconciliation exceptions and problems. With further training of both OTFM staff and tribal users, reconciliation problems should be reduced to something approaching private trust company industry "norms." This modern accounting system is also providing tribes with more timely and reliable information about their accounts than they have ever received. Furthermore, in my view, the system is comparable to those systems used by private sector trust companies and permits vastly improved service to the tribes.

Critical to the continued success of this system will be the ability of OTFM to retain existing trained and competent staff to administer the system and to insulate such staff to the extent possible from Department and Government reduction in force requirements and procedures.

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